

REMARKS/ARGUMENTS

Claims 25-46 are present in this application. By this Amendment, claims 25 and 46 have been amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

At the outset, Applicant respectfully submits that the finality of the February 11, 2004 Office Action is premature and should be withdrawn. In the previous Office Action, original claims 4-24 were indicated as containing allowable subject matter. As explained in the Remarks section of the Amendment filed October 17, 2003, new claims 25-46 were added generally to be in better form for U.S. practice, where the subject matter of the indicated allowable dependent claims was essentially included in new dependent claims 28-46. Notwithstanding, a number of these claims with previously-indicated allowable subject matter have now been rejected in the February 11 Office Action. As a result, Applicant has not been provided a fair opportunity to address the now-rejected claims.

For example, initially, the subject matter of previously-allowable claim 15 was incorporated into independent claim 25. Additionally, claim 28 includes the subject matter of previously-allowable claim 4; claims 30-32 contain the subject matter of previously-allowable claims 6-8, respectively; claims 39-40 include the subject matter of previously-allowable claims 16-17, respectively; claims 41-42 include the subject matter of previously-allowable claims 19-20, respectively; and claims 44-45 include the subject matter of previously-allowable claims 22-23, respectively.

Moreover, in the present Office Action, claim 38 is rejected under 35 U.S.C. §112, second paragraph, due to the use of the phrase “attachable struts” (this rejection is addressed in more detail below). This identical language, however, was included in original claim 14.

Thus, even though the claims have been presented as new claims (generally to be in better form for U.S. practice), the previously-allowable subject matter has now been rejected, and Applicant should be provided a fair opportunity for response.

Still further, on page 3 of the Office Action, claims 1, 27-33, 39, 40, 44 and 45 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,139,132 to Fairchild, Jr. Since claim 1 was canceled in the October 17 Amendment, this rejection is improper. Moreover, dependent claims 27-33, 39, 40, 44 and 45 depend either directly or indirectly from independent claim 25, which does not form part of this rejection. As a consequence, the rejection of the dependent claims is without foundation, and the finality of the Office Action should be withdrawn in order to properly set forth the grounds of rejection.

Withdrawal of the finality of the February 11, 2004 Office Action is thus respectfully requested.

Applicant’s representative had made several attempts to arrange a personal or telephonic interview with the Examiner to discuss the finality of the February 11 Office Action as well as to discuss potential amendments to better distinguish the invention from the references of record. Applicant’s representative has documented voice messages for

Examiner Donnelly on May 7, May 21 and June 1, 2004. When these messages were not returned, Applicant's representative contacted Supervisory Examiner Lucchesi with voice messages on June 4, June 7 and June 10, 2004 although still without any reply. In view of the nature of the outstanding rejections and finality of the Office Action, Applicant believes that an interview would still be helpful to forward the prosecution of this application. Applicant thus respectfully requests that the Examiner contact Applicant's representative to schedule either a personal or telephonic interview in order to address any remaining issues after consideration of this response.

Claims 25-27, 30, 32 and 40-42 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 4,986,536 to Zane. This rejection is respectfully traversed.

Claim 25 has been amended to more closely reflect the language of original claim 15, which was indicated in the previous Office Action as containing allowable subject matter. Moreover, claim 25 defines counter supports disposed in a forward direction relative to and facing the support, . . . and an operation element operatively coupled with the frame and extending in the forward direction, the operation element being configured according to relative positions of the counter supports and the swivel axis to drive the counter supports toward the front shoulder areas about the swivel axis. The Office Action contends that weight holders 19, 19' may be equated to the claimed "operation element." Without conceding the accuracy of this contention, claim 25, in contrast with the Zane structure, recites that the operation element extends in the forward direction. With reference for example to Fig. 2 in the Zane patent, the weight holders 19, 19' do not

extend forwardly, but rather extend laterally (the "forward direction" in claim 25 is defined as the direction in which the counter supports are disposed relative to the support).

Since at least this subject matter is lacking in the Zane patent, Applicant submits that the rejection is misplaced.

With regard to the dependent claims, without conceding the conclusions in the Office Action, Applicant submits that these claims are allowable at least by virtue of their dependency on an allowable independent claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1, 27-33, 39, 40, 44 and 45 were rejected under 35 U.S.C. §102(b) over Fairchild, Jr. This rejection is respectfully traversed.

Since claim 1 has been canceled by the Amendment filed October 17, 2003, as discussed above, Applicant respectfully submits that the rejection is improper. Moreover, since no basis of rejection has been established for independent claim 25, dependent claims 27-33, 39, 40, 44 and 45, which depend either directly or indirectly from independent claim 25, cannot be properly rejected. This improper rejection could also have been discussed and may still be discussed during an interview.

Withdrawal of the rejection is respectfully requested.

For discussion purposes, assuming the Examiner corrects the rejection over the Fairchild, Jr. patent to address claim 25, Applicant respectfully submits that claim 25 is distinguishable over Fairchild, Jr. Assuming the Office Action bases its rejection with

reference to “support 100 coupled between said struts,” Applicant notes that item “100” in Fairchild, Jr. references a center of gravity through the backpack. Claim 25, in contrast, defines a crosswise support coupled between the pair of actuation struts and disposed in an orientation perpendicular to the longitudinal axis, the support forming a swivel axis.

Moreover, claim 25 defines an operation element operatively coupled with the frame and extending in the forward direction, the operation element being configured according to relative positions of the counter supports and the swivel axis to drive the counter supports toward the front shoulder areas about the swivel axis. In the Fairchild, Jr. patent, in contrast, the levers 10, 12 are not positioned relative to the shoulder pads 14, 16 and the center of gravity 100 to drive the shoulder pads 14, 16 toward front shoulder areas of the wearer about any axis that may even remotely be defined by the center of gravity 100. In fact, due to the existence of multiple cross bars 26, 27 and 28, the Fairchild, Jr. structure is incapable of such relative positioning. Applicant thus respectfully submits that claim 25 is distinguishable from the Fairchild, Jr. patent.

Claim 38 was rejected under 35 U.S.C. §112, second paragraph. The Office Action contends that the meaning of “attachable struts” is unclear. To the contrary, however, the attachable struts 43 are described in detail in the specification at, for example, page 11, line 25 - page 14, line 2 and with reference to Figures 5 and 6. Applicant thus respectfully submits that those of ordinary skill in the art would readily

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understand what is being claimed, and Applicant submits that the rejection is misplaced.

Withdrawal of the rejection is respectfully requested.

Applicant acknowledges with appreciation the indication of allowable subject matter in claims 29, 34-37, 43 and 46. Claim 46 has been rewritten in independent form.


In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

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